



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 29 of 2016

M. Salman Hussain Chawala (Nominee Director NIT)
(Paramount Spinning Mills Limited)

Appellant

Versus

Amina Aziz, Director Corporate Supervision Department,
SECP

Respondent

Date of hearing:

03/08/16

Present:

For Appellant:

1. Mr. Ahmed Bashir, Advocate
2. Mr. Musa Bashir Injua, Advocate
3. Mr. Shahid Aziz, NIT

For Respondent:

1. Ms. Amina Aziz, Director (CSD)
2. Mr. Aqeel Ahmad Zeeshan, Joint Director (CSD)
3. Mr. Ehtesham uddin Ahmed, Management Executive (CSD)

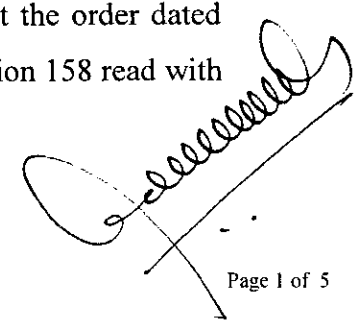
ORDER

1. This order shall dispose of Appeal No.29 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 11/05/16 (the Impugned Order) passed by the Respondent under section 158 read with section 476 of the Companies Ordinance 1984 (the Ordinance).

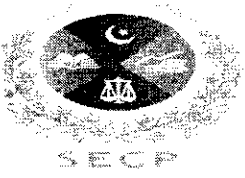


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2. Brief facts of the case are that Paramount Spinning Mills Limited (the Company) failed to hold its Annual General Meeting (the AGM) for the year ended 30/06/15 on or before 31/10/15 as required under section 158(1) of the Ordinance. Therefore, a Show Cause Notice (the SCN) dated 14/01/16 was issued to the Appellant and other directors of the Company however, they failed to respond the SCN. The case was fixed for personal hearing on 04/04/16, 18/04/16 and 29/04/16 however, no one appeared before the Respondent therefor, case was proceeded ex-parte. The Respondent imposed a fine of Rs.50,000 on each of the directors including the Appellant for non-holding of the AGM for the year ended 30/06/15.
3. The Appellant being aggrieved challenged the validity of Impugned Order before the Appellate Bench (the Bench) through this appeal. During the hearing before the Bench, Appellant was represented by his counsel, Ahmed Bashir, Advocate High Court (the Counsel). The Counsel reiterated the submissions made through the appeal and emphasized that the Appellant was a nominee director of NIT and he had no active role in the management of Company. The Counsel further added that Appellant was the only director on Board of Directors (the BOD) who repeatedly asked the management of the Company to comply with the regulatory and statutory requirements including holding of AGM. The Appellant always asked the management of Company to adhere the mandatory requirements of law to avoid punitive action of Securities and Exchange Commission of Pakistan (the Commission). The Counsel referred annexure "B" letter dated 30/09/15, annexure "C" email dated 23/02/16 and annexure "D" letter dated 19/04/16 of the appeal whereby Appellant requested Company Secretary Javaid Iqbal to make arrangements for the AGM of the Company within stipulated time. The Counsel also relied upon the extracts of minutes of BOD meeting (annexure "E").
4. The Respondent has vehemently denied the assertions of the Appellant through written reply and through detailed rebuttal arguments. The Respondent stated that the law regarding holding of the AGM is clear and explicit which provides that a

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Company is required to hold AGM within four month from the close of its financial year. The Respondent further argued that although, the Appellant is non-executive director however, there is no distinction in law between executive and non-executive directors and they have same duties and responsibilities. The letters and email referred by the Appellant are not in the record of Commission. The Respondent stated that a nominee director represents the interest of nominating authority on the BOD of a Company therefore his role is more critical than an executive director. The Appellant being a nominee director cannot be absolved from his statutory duties under the Ordinance.

5. We have heard the parties (Appellant and Respondent) and perused the record of appeal.
6. The Appellant has taken single defense that being a nominee/non-executive director he had no role in the management of the Company and in his official capacity he asked the management of Company to hold AGM in timely manner to avoid penal consequences. Therefore, he cannot be held responsible for contravention of section 158 of the Ordinance. The Respondent argument against the appeal is that there is no legal distinction between executive and non-executive directors' duties therefore; Appellant has been rightly penalized vide the Impugned Order.
7. Arguments heard record perused, the Bench is of the view that a company director whether nominated or elected are responsible to ensure compliance of relevant laws however, while adjudicating upon a contravention attributed to the BOD of a company, we have to consider respective role and conduct of BOD members. No doubt the Appellant is a nominee/ non-executive director and he had no active role into day to day affairs of the Company, however this fact alone cannot exonerate him from the contravention of section 158 of the Ordinance. To dislodge the allegation that Appellant was knowingly and willfully, a party to the default, the Appellant in its defense has relied on two letters, an email and extracts of minutes of BOD wherein he has asked the Company's management to comply with the requirements of relevant

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laws in true letter and spirit to avoid penal action of the Commission, however all went in vain. The Appellant has demonstrated good conduct by writing letters, email and by raising his concern during BOD with respect to violation of section 158 of the Ordinance.

8. The Appellant being a nominee director was required to be more vigilant and conscious to protect the interest of the institution represented by him (NIT). A non-executive/nominee director should have act as a whistle blower to indicate violations committed by company management. Firstly, Appellant was required to raise his concern within the Company and thereafter if his concerns were not addressed, he was required to intimate the violations to the Commission or the Stock Exchange. The documents annexed with the appeal shows that the Appellant by agitating the issue of AGM within the Company has performed first part of his obligation, however second part whereby he was required to highlight the violations to the Commission or the Stock Exchange has not been fulfilled. The partial performance by the Appellant depicts good faith; therefore, it cannot be overlooked while deciding this appeal.
9. The issue involved in this appeal has already been decided by Appellate Bench No.1 in appeal no.11 of 2016 (Imran Rafiq versus Mr. Akif Saeed, Commissioner SMD). The said appeal was filed by a nominee director of NIT and after hearing, the Bench has set aside the order to the extent of Appellant. The instant appeal is even on lesser footing then the appeal no.11 of 2016 because violation of this appeal pertains to year 2015 whereas the appeal no 11 of 2016 had long history of violations.
10. In the above circumstances it is mandatory for the Bench to follow Principle of consistency in order to maintain balance and the doctrine of equality before law as enshrined in Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore, we hereby allow this appeal and set aside the Impugned Order to the extent of Appellant. We direct the management of NIT to arrange, extensive training program for the directors representing NIT on different companies BOD so that they may discharge their fiduciary duties in accordance with law. The Bench also directs

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the Respondent to issue a direction for the institutions/companies who nominate directors on BOD of different companies to arrange extensive training program for their nominee directors to ensure future compliance of relevant laws. Appellant is directed to refrain from similar non-compliance in future.

11. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: 01 SEP 2016